

1 CHAPEL TOWNHOMES, LLC * PLANNING BOARD OF
2 PETITIONER * HOWARD COUNTY, MARYLAND
3 ZONING BOARD CASE NO.: ZB 1099M *

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5 MOTION: *To recommend approval of the Zoning Map Amendment petition request to*
6 *rezone 32,549 square feet from B-1 to R-A-15, in accordance with the*
7 *Department of Planning and Zoning recommendation.*

8 ACTION: *Recommended Approval; Vote 4 to 0.*

9 * * * * *

10 **RECOMMENDATION**

11 On May 24, 2012, the Planning Board of Howard County, Maryland, considered the petition of
12 Chapel Townhomes, LLC for a Zoning Map Amendment to rezone the subject property from the B-1 District
13 to the R-A-15 District with a Documented Site Plan ("DSP"). The subject property is located on the north side
14 of Richards Valley Road approximately 350 feet east of MD 108 in the First Election District, and is
15 described as Tax Map 37, Grid 1, Parcel 4, Par. B; 5733 Richards Valley Road (the "Property").

16 The petition and the Department of Planning and Zoning Technical Staff Report and
17 Recommendation were presented to the Board for its consideration. The Department of Planning and Zoning
18 recommended approval of the petition based on findings that the petition met the evaluation criteria for a
19 finding of Mistake and that R-A-15 is the appropriate zoning district for the Property.

20 The Petitioner was represented by Sang Oh, Esq. No one testified in opposition to the petition. Mr.
21 Oh explained that the Property is an unimproved lot which is part of the established community of Shipley's
22 Grant and is surrounded on two sides by townhouses in this community. He said that residents of the
23 community do not want commercial uses on this site and that townhouses are desired. Mr. Oh said that B-1
24 zoning is too strong a zoning classification for this site and was driven by the premise that the church would
25 develop on this property. He said the essence of the Mistake is that the site should have remained residentially
26 zoned with the chapel use accomplished through the conditional use process. He said that with the passage of
27 time it has been proven the site is too small to accommodate a church.

28 A Board member asked if the Curtis family is aware of the proposed rezoning and Mr. Oh replied that
29 the Curtis family is in favor of townhouses on the site.

30 A Board member said the Mistake now seems to be a result of how the Property at large was
31 originally developed. If the site plan had been developed differently there would be a church on the site and it
32 seems that now that a church is not economically feasible for the site a Mistake is being alleged.

1 Mr. Oh said the Mistake is that the Council made the rezoning under a certain assumption and if the
2 Council had the benefit of hindsight and knew that the church was not going to develop on that site, they
3 would not have rezoned it to B-1.

4 A Board member opined that the Petitioner is claiming Mistake now because of how the roads and the
5 relationship between the residential and business areas were laid out and now the Petitioner is a captive of the
6 original site layout.

7 Mr. Oh explained that it was essential to the Zoning Authority's determination in the rezoning that the
8 church would develop on the property and once that changed, the premise on which the rezoning was based is
9 no longer true.

10 Duncan Slidell, Vice President of Bozzuto Homes explained that the Curtis family's desire was to
11 retain a parcel for themselves for the chapel so the rest of the development was not planned for commercial
12 development at all; the commercial piece that is there today was later planned by a developer.

13 Mr. Oh said that in zoning a Mistake is not necessarily an error in judgment but can be a decision that
14 was made under certain fundamental assumptions and when one of those fundamental assumptions proves to
15 be untrue with the passage of time that is technically a Mistake based on an assumption which is no longer
16 true.

17 Board members discussed retail uses on the site. One member commented that about half of the
18 existing businesses do not face MD 108 and they seem to be doing well. He asked if there are tenants in the
19 existing commercial area interested in expanding.

20 Mr. Slidell responded that although his company does not own the retail center, he would surmise that
21 it has taken longer than anticipated to fill out the retail space. He said an example is the bank parcel on the
22 corner which is still vacant and he opined that there is no interest on the part of retailers to expand.

23 One Board member said he understands the rationale for the rezoning request from the business and
24 community standpoint and believes that the site is not well suited for commercial development but is
25 uncomfortable that a Mistake is now being claimed to correct that. Another member agreed that rezoning the
26 site to residential does make sense, but a finding of Mistake means that there was something that was
27 overlooked in the original rezoning.

28
29 **Motion:**

30 Bill Santos made a motion to discuss the petition in a work session. Josh Tzucker seconded the motion.

31
32 **Discussion:**

33 One Board member said that for reasons that only the County Council knew the property was rezoned
34 to B-1. He said he does not agree with a finding of Mistake based on changes in economic conditions over

1 time, but the reality of building a church on $\frac{3}{4}$ acre does constitute a mistake being made in the rezoning
2 because it should have been evident that with setbacks and parking requirements, the site was not large
3 enough to accommodate a chapel. He said he also believes it was a mistake to have zoned the site B-1 based
4 on the assumption that the chapel was the only use envisioned for that site since it is clear that there was no
5 consideration regarding other commercial or retail uses besides the chapel for the site.

6 Board members agreed that R-A-15 is the correct zoning for the site because it represents a
7 continuation of what has already been built and the proposed development will fit within the community.
8 Board members discussed the notes from the presubmission community meeting and noted that the neighbors
9 and community are clearly looking for a continuation of the type of development that already exists. One
10 Board member expressed hesitation about the basis of the rezoning but the Board agreed the proposal makes
11 sense from a planning perspective and as a practical matter.

12
13 **Motion:**

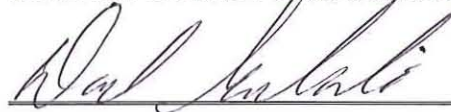
14 Bill Santos made a motion to approve the petition in accordance with the recommendation of the
15 Technical Staff Report to rezone the Property to R-A-15 with a Documented Site Plan. Josh Tzucker seconded
16 the motion.

17
18 **Vote:**


19 The motion for approval of the petition in accordance with the recommendation of the DPZ Technical
20 Staff Report to rezone the Property to R-A-15 passed by a vote of 4 to 0.

21 For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 21st day of
22 June, 2012, recommends that Zoning Board Case No. ZB 1099M, as described above, be **APPROVED**.

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24
25 HOWARD COUNTY PLANNING BOARD

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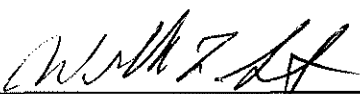
28 David Grabowski, Chairperson

29 
30 _____

31 Paul Yelder, Vice Chairperson

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33 _____

34 Josh Tzucker

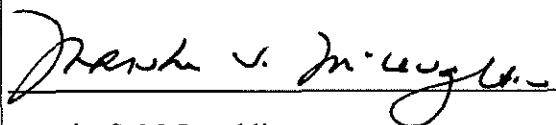


Bill Santos

ABSENT

Jacqueline Easley

ATTEST:



Marsha S. McLaughlin

Executive Secretary